

26 MAY 1961

Mr. William H. Orrick, Jr.
Assistant Attorney General
Civil Division
Department of Justice
Washington 25, D. C.

Attention: Mr. Donald B. MacGuinness

Reference: [redacted] W. Dulles, etc. U.S.D.C., D.C. Civil

Dear Mr. Orrick:

This is in reply to your letter of 27 April 1958 requesting pertinent data to enable the Department of Justice to defend the suit filed by [redacted]

Mr. [redacted] was employed by the Central Intelligence Agency on [redacted] in an excepted appointment position as a Grade P-5. The employment of [redacted] with the Agency was terminated effective at the close of business on [redacted] (Tab A). At that time, Mr. [redacted] was in the excepted service, Grade 13. The Director of Central Intelligence directed the termination of the employment of Mr. [redacted] under the authority granted to him by section 102(c) of the National Security Act of 1947, as amended (61 Stat. 495, 497; 50 U.S.C. 403(c)). [redacted] entitled "Separations" is the only Agency regulation relevant to this case (Tab B).

Plaintiff's allegation that he was separated from the Agency contrary to and in violation of the Agency's regulations apparently is the basis for his action. We shall first discuss the authority of the Director of Central Intelligence to terminate the employment of an employee of the Central Intelligence Agency. Section 102(c) of the National Security Act of 1947, as amended (50 U.S.C. 403(c)), reads as follows:

"Notwithstanding the provisions of section 652 of Title 5, or the provisions of any other law, the Director of Central

OGC Has Reviewed

Intelligence may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States, but such termination shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the United States Civil Service Commission."

In the only court case where section 102(c) was in issue, [redacted] v. Central Intelligence Agency [redacted] D.C.D.C.), decided on 20 May 1959, Judge Holtzoff, before granting the Government's motion for summary judgment, commented that "Of course, it all comes down to whether this statutory authority existed. If it did, the Director had a right to discharge this man for any reason, or no reason at all." In his opinion, Judge Holtzoff ruled, that under section 102(c) the Director has "plenary power to discharge any employee at will."

The authority vested in the Director of Central Intelligence was given by Congress "notwithstanding the provisions of any other law." The only requirement under section 102(c) is a determination by the Director that "the termination is necessary or advisable in the interests of the United States." Such a determination by the Director is final and there is no statutory provision for appeal. The authority of the Director is not limited by [redacted] or any other Agency regulation.

[redacted]

In connection with the responsibilities under paragraph 6, the subject of [redacted] continued employment with this Agency was discussed with him on numerous occasions by Operating Officials and he was warned of the possible consequences of his shortcomings and substandard performance. The Deputy Director for Intelligence identified [redacted] as an employee to be considered for separation and

recommended to the Director of Personnel that [] separated. The Director of Personnel reviewed the record [] employment and on 5 July 1961 recommended that his employment in the Agency be terminated.

On 27 January 1961, the Director of Central Intelligence, after careful deliberation and on the basis of a thorough and impartial review of all pertinent information regarding the employment of [] decided that all further consideration of the case should be suspended in the interests of the United States. He then directed that the employment of Mr. [] be terminated as necessary and advisable in the interests of the United States. Available to the Director of Central Intelligence was a complete work history of [] and included were all statements submitted by [] concerning his case.

In view of the above, we recommend as the appropriate action the filing of a motion for summary judgment, citing the authority of the Director of Central Intelligence under section 102(c) of the National Security Act, as amended. We believe there is no question of fact involved in this case. Should you desire an affidavit from the Director of Central Intelligence to support such a motion, we would be happy to draft one and submit it to you.

Witnesses who might possibly be used in this case are listed below:

[] Special Assistant to the Director of Personnel, Central Intelligence Agency, Washington 25, D.C.

[] Staff Assistant, Office of the Director of Personnel, Central Intelligence Agency, Washington 25, D.C.

Sincerely,

s/ Lawrence R. Houston

Lawrence R. Houston
General Counsel

Enclosures
Tabs A and B

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Letter dated 26 May 1961 to William H. Orrick, Assistant Attorney General,
Civil Division, Department of Justice, from General Counsel re,
[redacted] v. Allen W. Dulles, etc. U.S.D.C., D.C. Civil Action No.
[redacted]

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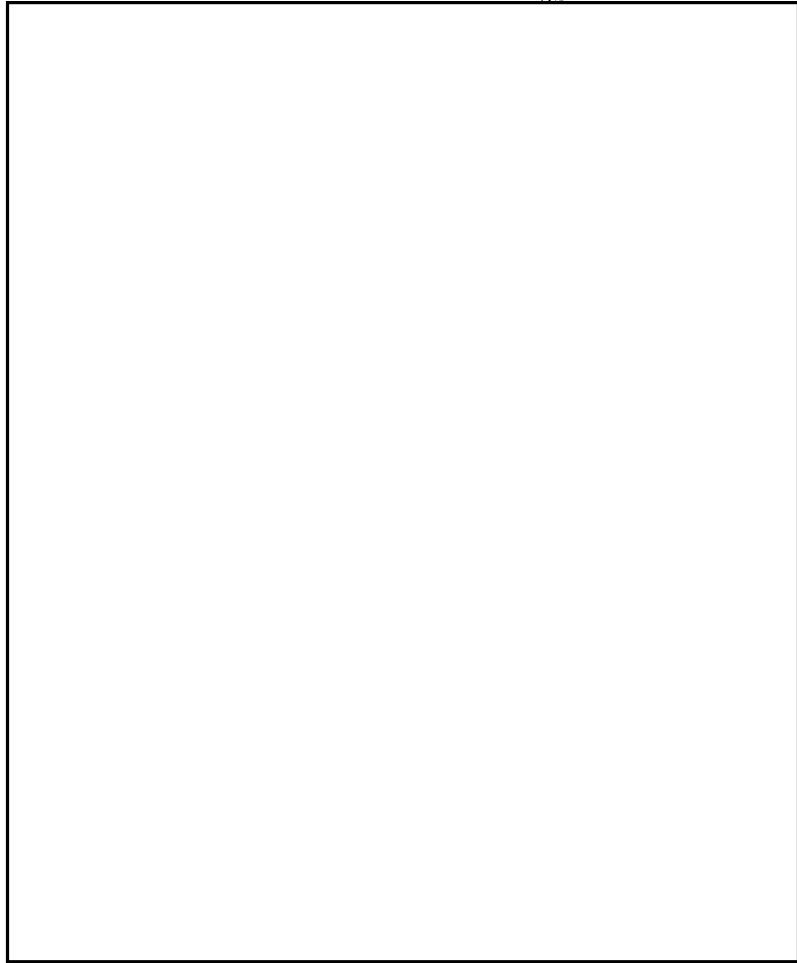
- 0& lcc - Addressee
- ✓ lcc - DCI w/o enclosures
- lcc - DDCI w/o enclosures
- lcc - IG w/o enclosures
- lcc - DD/S w/o enclosures
- lcc - Asst to DCI (Col. Grogan) w/o enclosures
- lcc - Director of Personnel w/o enclosures
- lcc - Director of Security w/o enclosures
- lcc - Asst Director for Operations w/o enclosures
- lcc - General Counsel w/o enclosures

OGC/MCM:edk (26 May 61)

CHECK CLASSIFICATION TOP AND BOTTOM				
TO		NAME AND ADDRESS	INITIALS	DATE
1	DCI	221 Admin		
2	<i>DCI advised of this by T.G. at Deps meeting on 29 May 61</i>			
3				
4				
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6				
ACTION		DIRECT REPLY	PREPARE REPLY	
APPROVAL		DISPATCH	RECOMMENDATION	
COMMENT		FILE	RETURN	
CONCURRENCE		INFORMATION	SIGNATURE	
Remarks: <i>on 5/26 called John Warner about date in line 1 of letter. He will see that the date is changed from 1958 to 1961.</i>				
<i>Later: Marie said they had original for hand carry on 5/29 so will change date. mfb</i>				
FOLD HERE TO RETURN TO SENDER				
FROM: NAME, ADDRESS AND PHONE NO.				DATE
General Counsel 221 East				

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